

REMARKS

Claims 1-22 and 40-45 are currently pending in the application. Claims 1-22 and 40-45 were rejected. Claims 1, 2, 5, 6, 7, 11, 12, 13, 16, 17, 18, 22, 40, 41, and 45 have been amended.

The Examiner rejected claims 1-11 and 40-45 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,035,289 (Chou). The rejection is respectfully traversed.

Chou describes techniques for the logistics industry which relate to “double auction tradebuilding by matching...a plurality of electronically posted bids with a plurality of electronically posted ask records.” See Abstract. The Examiner correctly states that “Chou does not disclose assigning a group identifier to the plurality of units of capacity and using the group identifier for generating a bid.” The Examiner then goes on to say that these limitations of the claimed invention are obvious without providing any supporting documentation for such an assertion. Essentially, the Examiner has cited Chou as a background reference and then rejected the invention as obvious with only vague, unsupported assertions which completely ignore the nature of the invention.

For an obviousness rejection to be sufficient, the Examiner must show that each and every limitation in a claim is either present in the prior art, or obvious to one of ordinary skill in the art. When a rejection asserts that a limitation is common knowledge or well known in the art, “there must be some form of evidence in the record to support such an assertion...[G]eneral conclusions concerning what is “basic knowledge” or “common sense” to one of ordinary skill in the art without specific factual findings and concrete evidence in the record to support these findings will not support an obviousness rejection.” See MPEP 2144.03.B.

Not only has the Examiner failed to provide such findings or evidence, his assertion is misplaced in that, even assuming that the Examiner’s assertion is true, it ignores the significance of what is being claimed in the present application. That is, even if using group identifiers in computing is well known, it does not follow that the claimed group identifiers and the claimed

use of those group identifiers in the context of the logistics industry is obvious. To the contrary, the claimed invention is not obvious specifically *because* of the nature of what is being grouped and the manner in which those groupings are employed.

The present invention relates to “a system for matching carrier capacities with shipper loads via a wide area network.” The various embodiments claimed in the present application enable carrier representatives to manage their units of capacity in ways which have not been possible before. For example, claims 1 and 5 allow the grouping of units of carrier capacity for bidding against shipper loads. Units of carrier capacity, e.g., trucks, shipping containers, rail cars, etc., by their very nature are difficult to manage in an aggregate way. That is, individual trucks in a fleet are typically not moving in coordinated ways for any significant periods of time. One truck may be moving from L.A. to Tucson while another may be moving from Seattle to San Francisco. Grouping such units of capacity together does not make much sense unless a system is provided in which a carrier has visibility into the current status of all of his units of capacity, and the technical means for efficiently managing them. The system described in the present application provides such an infrastructure.

That is, because carriers have for the first time the ability to manage their units of capacity in a coordinated way, it becomes possible to aggregate units of capacity in a meaningful way. So, in the example described above, the carrier is provided with the kind of visibility into their own available capacity and into the available shipper loads which could enable him to ensure that the truck heading for San Francisco and the truck heading to Tucson eventually end up in the same location such that they could be used in combination to transport a single shipper load. Before the system of the present invention, systems just did not exist which allowed this level of coordination of specific units of carrier capacity.

Similarly claims 6-11 enable bidding the same unit of capacity against multiple shipper loads. This has not been practicable before because of the potential liability a carrier would face

for committing the same unit of capacity to multiple loads. That is, if two shippers end up accepting bids for the same unit of carrier capacity, and the carrier is only able to satisfy one of the bids because the same unit of capacity was bid against both, one of the loads will be left sitting on a dock, the shipper will suffer economic damage, the carrier's reputation will be sullied, and the carrier may be liable to the injured shipper for damages.

However, because the marketplace of the present invention provides a variety of sophisticated tools for managing carrier capacity and for matching that capacity with shipper loads, it now becomes possible to bid individual units of carrier capacity against multiple shipper loads without the risk to the carrier of incurring this sort of liability. Claims 40-45, which enable the communication of the number of loads against which a particular unit of capacity has been bid, provide yet another example of the flexibility with which the system of the present invention allows a carrier to monitor and deploy its units of capacity.

The Examiner's reliance on Chou further supports the Applicants' position that the claimed techniques are not obvious. That is, Chou describes an allegedly sophisticated system for matching bids and asks between carriers and shippers. Yet it makes no suggestion that carriers can group their units of capacity in the manner claimed or for the purposes recited by the claims of the present application. Given the clear advantages of providing this flexibility to carrier representatives mentioned above, it is hard to reconcile the fact that Chou makes no mention or suggestion of such a capability with the Examiner's assertion that it would have been obvious to do so.

Why is Chou silent on this? The Applicants assert that it is because the system described in Chou does not provide the carrier capacity management capabilities which would make the claimed invention useful. And because Chou's system does not provide such capabilities, one of ordinary skill in the art would simply not contemplate the functionalities of the claimed invention as an obvious addition to Chou's teachings.

In view of the foregoing discussion, the rejection of claims 1-11 and 40-45 over Chou are believed overcome.

The Examiner rejected claims 12-22 under 35 U.S.C. 103(a) as being unpatentable over CAPS Logistics Inc., PR Newswire (CAPS). The rejection is respectfully traversed.

CAPS generally describes a system by which shippers can organize their shipping requirements and evaluate carrier bids. Once again, the Examiner correctly stated that CAPS does not disclose key limitations of the claimed invention. And once again, the Examiner made up this deficiency by making unsupported assertions that the missing limitations would have been obvious to one of ordinary skill in the art. The Examiner made vague references to auction sites on the Web but did not provide any evidence of the existence of the specific functionality claimed, nor any evidence that any such functionality, if existing, existed prior to the filing of the present application.

Claims 12 and 16 recite a mechanism by which a carrier may be protected from having multiple shippers accept parallel bids corresponding to the same unit of capacity. As described above, such a mechanism is highly advantageous in protecting a carrier from the risks associated with doubly committing a particular unit of capacity. The Examiner referred to auction sites such as eBay as providing the recited mechanism. Not only did the Examiner fail to provide any evidence and therefore fail to make a prima facie case of obviousness, he ignored the fact that the claims explicitly recite that a plurality of bids for the same unit of capacity are made against a plurality of loads, not against a single load as recited in the Examiner's example. Therefore, the Examiner's argument fails on its face.

In addition, bidders on auction sites such as eBay routinely make parallel bids against multiple products and are provided no mechanism which would prevent all of the bids from being accepted. That is, if an eBay bidder makes two bids for different products and they are

both accepted, he is absolutely expected to pay for both.

Claims 17 and 22 recite the ability to make bids for a currently unavailable unit of capacity. The Examiner referred to the ability on auction sites to make bids for currently unavailable products. In addition to the failure to support the rejection with any documentary evidence, the Examiner's example does not apply to the claimed invention. That is, the invention allows a carrier to bid a specific unit of capacity, e.g., a truck, which is currently unavailable against a shipper load. The Examiner's example does not apply to this scenario in that the auction bidder described is bidding a fungible resource, e.g., cash or credit, against a product which is presumably out of stock. By contrast, the carrier in claims 17 and 22 is bidding a non-fungible resource, i.e., a specific unit of carrier capacity, against a load which is currently available. It is therefore submitted that the Examiner's example, in addition to being unsupported, is not applicable to the claimed invention.

In view of the foregoing, the rejection is believed overcome.

In addition, in view of the Examiner's failure to support the rejection of any of the claims of the present application with the evidence required to establish a prima facie case of unpatentability, the Applicants respectfully request that the Examiner provide such evidence, and further request that the Examiner clearly state how any such evidence, if existing, is applicable to the context of shippers and carriers which is explicitly recited in the claims.

Notwithstanding the foregoing discussions, each of the independent claims of the present application has been amended to clarify important aspects of the claimed invention. For example, claims 1 and 5 have been amended to recite that "each unit of capacity corresponding to specific carrier equipment having an associated equipment identifier." Similarly, claims 6 and 11 have been amended to recite that the unit of capacity "corresponds to specific carrier equipment having an associated equipment identifier." Similar amendments have been made to other independent claims in the application. The Applicants offer these amendments for

clarifying purposes only and not for any reason related to patentability. It is hoped that the distinctions between the claimed invention and the cited art will be clearer to the Examiner in view of these amendments.

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (510) 663-1100.

Respectfully submitted,
BEYER WEAVER & THOMAS, LLP

A handwritten signature in black ink, appearing to read "Joseph M. Villeneuve", with a long horizontal flourish extending to the right.

Joseph M. Villeneuve
Reg. No. 37,460

P.O. Box 70250
Oakland, California 94612-0250
(510) 663-1100